



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MQB/157648

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 15, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on June 20, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly discontinued Medicare Premium Assistance for the period of February 1, 2014 – April 30, 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Katherine May  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of [REDACTED]
2. On January 6, 2014, the agency issued a notice of renewal to the Petitioner at her address on [REDACTED]

3. On January 7, 2014, the agency issued a Notice of Proof Needed to the Petitioner at the [REDACTED] address requesting verification of her checking account. The due date for the information was January 16, 2014. The Petitioner did not provide the requested verification by January 16, 2014.
4. On January 17, 2014, the agency issued a Notice of Decision informing the Petitioner that her Medicare Premium Assistance benefits would be discontinued effective February 1, 2014 due to her failure to submit requested verification. The notice also informed the Petitioner of the right to a hearing by filing an appeal with the Division of Hearings and Appeals by March 19, 2014.
5. On April 23, 2014, the Petitioner submitted a new application for Medicare Premium Assistance benefits. She supplied all necessary information and verifications.
6. On April 25, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she was eligible to receive Medicare Premium Assistance benefits effective May 1, 2014.
7. On April 30, 2014, the Petitioner reported a change in address to the agency.
8. On May 15, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning Medicaid or Medicare must be filed within 45 days of the date of the action. Wis. Stats. §49.45(5), Wis. Stats. A negative action includes the denial or termination of benefits. The only negative action in this case was taken on February 1, 2014 when the agency terminated the Petitioner's Medicare Premium Assistance benefits. The notice of Decision issued on April 25, 2014 was not a negative action. The agency re-opened her benefits effective May 1, 2014. The Petitioner's appeal was filed 57 days after the date of the negative action. Therefore, it is not timely and I do not have jurisdiction to consider the merits of the case.

The Petitioner contends that she did not receive any notices from the agency regarding the need to verify her checking account and that did not receive the January 17, 2014 notice informing her that her benefits would be discontinued. She noted that she moved in March or April. She presented no evidence to support that she would not have received mail that was addressed correctly to her in January.

The Petitioner also testified that her review should be in April so she was not expecting any mail about a renewal in January. The agency can request a review or verification at any point. The Petitioner presented insufficient evidence to demonstrate that she did not receive the January 17, 2014 notice and the notice of proof needed. Therefore, her appeal is untimely and I therefore cannot consider the merits of the case.

### **CONCLUSIONS OF LAW**

The Petitioner's appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new

evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

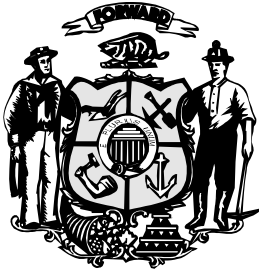
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 5th day of August, 2014

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 5, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability